

Under the settlement, if the Commission in Phase III of I.87-11-033 (the Implementation Rate Design proceeding) applies an end-user surcharge on cellular customers to fund Universal Lifeline Telephone Service, the California High-Cost Fund, which supports the operations of small telephone companies, or the DEAF Trust, or to balance revenues, McCaw pledges not to appeal that aspect of the decision. (Settlement, par. 29.) This pledge has little substance, since the merged company could pursue an appeal of this or any other issue in I.87-11-033 through AT&T-C, another AT&T subsidiary, which is also a party to that proceeding.

The parties to the settlement recommend that the Commission open an investigation similar to the Forum Investigation (I.90-02-047). The investigation would provide a mechanism for parties to petition the Commission to address issues related to the merger or implementation of the settlement. Parties could also raise questions concerning anticompetitive effects of the merger that were not foreseeable when the settlement was approved. (Settlement, par. 19.)

In general, we think it is a bad practice to present us with a settlement that contains a condition that requires action from us other than our approval. This sort of condition is inappropriate because it effectively subjects us, the regulators, to the will of the parties we are responsible for regulating. In this case, the parties to this settlement have done no more than recommend that we open an investigation similar to I.90-09-047 (although it is unclear how specific issues referred to the investigation would be handled if we declined to follow this recommendation). The proposed purpose of this proceeding is to provide a forum for resolving disputes about the terms of the settlement, addressing specific issues designated in the settlement, and resolving \$ 854 issues that are not now foreseeable. In a companion order, we will institute an investigation along the lines recommended by the settling parties.

For the investigation to function effectively, we must have the ability to enforce orders issuing from it. That presents a problem, because neither AT&T nor McCaw is a regulated utility subject to our jurisdiction. Because AT&T and McCaw joined in the settlement that made this proposal, we assume that they have no objection to submitting to our jurisdiction for the limited purpose of complying with orders resulting from the investigation; otherwise, it is futile for us to open this investigation. As a condition to our approval of the merger, we will require AT&T and McCaw to consent to our jurisdiction for this limited purpose.

We conclude that the proposed merger will not limit our jurisdiction in any way or diminish our ability to regulate and audit public utility operations in this state.

#### H. Conclusion

After considering the criteria listed in § 854(c), we conclude that, on balance, the proposed merger is in the public interest.

### VI. Environmental Concerns

Applicants have proposed what is truly a paper transaction, one that changes only the owner of the parent corporation of the regulated California utilities. Applicants have not proposed any alterations to the facilities of the California utilities as part of this merger. Under these circumstances, it can be seen with a certainty that there is no possibility that the proposed merger may have a significant adverse effect on the environment. (14 Cal. Code of Regs. § 15061(b)(3).) We note that to the extent that the merged company can collocate cellular facilities on AT&T's existing microwave towers, the proposed merger will have a net beneficial effect on the environment.

## VII. Alternatives to the Merger

Section 854(d) requires us to "consider reasonable options to the proposal recommended by other parties, including no new acquisition or control, to determine whether comparable short-term and long-term benefits can be achieved through other means while avoiding the possible adverse consequences of the proposal."

In this proceeding, no party proposed specific alternatives to the merger. CAA, and perhaps Telesis by implication, suggested that the merger should be denied, the equivalent of no merger. We believe that the no-merger alternative would not produce comparable benefits to the merger as rapidly as the merger, and many of the benefits would evaporate if the merger is not consummated.

## VIII. Conclusion

We conclude that required elements of § 854 are present in this proposal. The merger will provide net short- and long-term benefits to ratepayers, and competitive pressures on pricing supplies a method of assuring that McCaw's California customers receive the forecasted benefits. The merger will not adversely affect competition; in fact, we approve this merger largely because we find that it adds a new competitive element in an industry of burgeoning competition. After considering the criteria of § 854(c) we conclude that the proposed merger is in the public interest. We therefore will grant the authority requested in the application.

We also will approve the settlement. As the preceding discussions have shown, the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. The motion to adopt the settlement is granted.

**Findings of Fact**

1. On August 24, 1993, AT&T, McCaw, and Ridge Merger Corporation filed a joint application seeking the Commission's authorization to transfer indirect control to AT&T of 15 of McCaw's regulated California telecommunications utilities.

2. Under the terms of the proposed merger of AT&T and McCaw, AT&T will exchange shares of its stock for the outstanding stock of McCaw, and McCaw will become a wholly owned subsidiary of AT&T. AT&T will acquire indirect but actual control of the 15 California utilities.

3. Applicants, DRA, Public Intervenors and CRA have negotiated a settlement agreement, resolving their disputes about the application.

4. On December 9, applicants filed a motion to adopt the proposed settlement agreement under Rule 51.1(c).

5. Telesis and CAA filed comments contesting the settlement under Rule 51.5.

6. On February 9, the AG submitted his opinion on the effects of the proposed transaction on competition in California.

7. Applicants proposed that the application should be treated by the Commission as if subsections (b) and (c) unquestionably applied.

8. Due to the merger, McCaw's cellular customers will benefit from technological service improvements, including "roaming."

9. Due to the merger, McCaw's cellular customers will benefit from improved fraud control.

10. The merger will increase McCaw's customers' convenience by giving them access to AT&T's marketing and distribution system.

11. Improved efficiencies resulting from the merger will make cellular service available to a wider segment of the population.

12. Under the settlement, applicants commit to make at least \$32.5 million in capital investments over two years in California to improve McCaw's cellular service.

13. Due to the merger, customer service will improve, manifested in a lower percentage of dropped calls, improved sound quality, reduced cross-talk and interference, and improved transferring of calls between wireless and wired systems.

14. McCaw's access to AT&T's Bell Labs after the merger will lead to faster development of new technologies and research and development of capacity expansion, radio frequency propagation characteristics, speech recognition, and systems integration.

15. The merger should result in a higher level of procurement from WMDVBES by McCaw's California utilities.

16. The merger will further the development of universal number service for McCaw's customers.

17. Under the settlement, McCaw will implement digital technology where cost-effective.

18. The market for interexchange telecommunications services is dominated by three major carriers--AT&T, MCI, and Sprint--with lesser participation by a group of about seven national companies. There are about 190 certificated IECs, mostly resellers, in California.

19. In D.93-02-010, we found that "effective competition" existed in the market for intrastate interLATA communications.

20. Focusing on the current concentration in the interexchange market ignores the dynamic nature of telecommunications. The dynamism of this industry promises to increase in the future.

21. The entry barriers for resellers are very low.

22. AT&T's dominance of the interexchange market has been and is being eroded. Interexchange service in California is effectively competitive, and increasing market opportunities will allow competition to flourish in the future.

23. Even in highly competitive industries it is commonplace to charge a uniform price to customers who cause the seller to incur very different levels of cost.

24. The settlement commits applicants to provide equal access to McCaw's cellular customers.

25. The settlement articulates acceptable requirements for equal access.

26. Applicants' commitment to equal access will increase competition for the long distance business of McCaw's cellular customers.

27. Bundling restrictions are in place and are adequate to prevent the competitive abuse that Telesis fears.

28. The existence of only two cellular wholesalers in each MSA or RSA has resulted in high prices despite the existence of numerous retailers.

29. Changing the ownership of the parent of McCaw's cellular utilities will have no effect on the underlying obstacle to greater competition in local cellular markets--the wholesale duopoly.

30. In the near future, substantial competition to conventional local cellular service could emerge from at least three technologies -- SMR, PCS and mobile satellite services.

31. McCaw does not face competition for providing regional cellular services in all or part of its eight regional clusters.

32. McCaw currently has a competitive edge in the eight regional clusters it serves.

33. The development of wireless markets and technologies will soon deprive McCaw of its regional advantage.

34. AT&T manufactures switching, transmission, and cell-site equipment and software for the wireless telecommunications industry. McCaw uses AT&T's equipment in about 40% of its systems, and the merger thus has vertical implications in this market.

35. Both AT&T and McCaw have strong competitive incentives not to act in an anticompetitive manner in the wireless equipment market.

36. The equipment market shows many of the characteristics of a competitive market.

37. It is AT&T's stated policy to negotiate in good faith with all cellular service providers with respect to the sale of cellular infrastructure equipment.

38. A merged AT&T/McCaw will have a competitive incentive not to facilitate the ability of Telesis and other competitors to integrate new wireless systems into the extensive public switched network.

39. The merger with AT&T will help McCaw reduce its cost of debt.

40. AT&T can acquire McCaw while retaining its investment-grade bond rating.

41. The merger will maintain the financial condition of AT&T and will improve the financial condition of McCaw's California subsidiaries.

42. Service to McCaw's customers in California will improve after the merger.

43. The merger will maintain or improve the quality of management of AT&T, McCaw, and McCaw's 15 California utilities.

44. Applicants have made commitments that no loss of jobs or replacement of managers will occur due to the merger.

45. The settlement provides that for at least two years, no net loss of jobs will occur for McCaw's cellular utilities or AT&T's California operations as a result of the merger.

46. Under the settlement, no material reduction in salary or job benefits by job classification will occur for McCaw's cellular utilities' employees for two years.

47. The merger will be fair to affected utility employees.

48. The merger agreement offers McCaw's shareholders a 20% premium over market prices.

49. The dilution in AT&T's earnings resulting from the merger is not expected to affect AT&T's annual earnings growth of around 10%.

50. The proposed merger is fair and reasonable to all affected shareholders.

51. The proposed merger will benefit the local and state economies and the communities served by McCaw.

52. Neither AT&T nor McCaw is regulated by this Commission.

53. The affected McCaw utilities will remain under our jurisdiction.

54. The proposed merger will not limit our jurisdiction in any way or diminish our ability to regulate and audit public utility operations in this state.

55. It can be seen with a certainty that there is no possibility that the proposed merger may have a significant adverse effect on the environment.

56. The no-merger alternative would not produce comparable benefits to the merger as rapidly as the merger, and many of the benefits would evaporate if the merger is not consummated.

#### Conclusions of Law

1. Section 854(a) requires the Commission's approval of the acquisition even if subsections (b) and (c) do not apply.

2. The application, PHC statements, various motions, comments, and prepared testimony provide a record we may use to determine whether to accept the settlement.

3. The materials listed in Conclusion No. 2 are subject to the obligation of anyone who signs a pleading, enters an appearance, or transacts business with the Commission "never to mislead the Commission or its staff by an artifice or false statement of fact or law." (Rule 1.)



4. To the extent that arguments and opinions, rather than facts, are asserted to support a party's position, we may use logic to evaluate those arguments and opinions and may accept the portions that survive this scrutiny.

5. One of the primary benefits of settlements is the avoidance of litigation.

6. In light of the nature of our regulation of competitive telecommunications industries, competitive price pressures and service competition are the appropriate regulatory mechanisms to use to assure that the net benefits of the proposed merger are passed on to ratepayers.

7. AT&T's practice of charging the same price for cellular and landline long distance calls is neither improper price discrimination nor evidence of market power.

8. Increasing competition for interexchange services by lifting the restrictions of the MFJ is beyond our jurisdiction.

9. Equal access is crucial to providing customers with the convenient ability to choose an IEC.

10. Section 352 prohibits utilities from selling two or more of their products in combination for a price different from the sum of the rates for the individual services.

11. Business and Professions Code § 17026.1 bars the bundling of cellular equipment and service.

12. We have prohibited the practice of requiring the customer to subscribe to cellular service at tariffed rates as a condition for receiving special rates or discounts for cellular equipment. We have also prohibited the bundling of tariffed and unregulated services.

13. Section 453(a) bars utilities from tying the provision of one type of service to the purchase of another service.

14. Adding McCaw's relatively insignificant share of the interexchange market to AT&T's leading market share will not have substantial competitive consequences.

15. The proposed merger will not have an adverse effect on competition in the interexchange market.

16. The merger will not have an adverse effect on competition in local cellular markets.

17. The merger will not have an adverse effect on competition in regional cellular markets.

18. Parties who believe that AT&T has engaged in anticompetitive activity in connection with the maintenance or programming of central office switches may file petitions in the merger forum investigation that we open today in a companion order.

19. The merger will not allow AT&T to dictate industry standards.

20. Competitive pressures exerted by a dynamic market, backed by the threat of legal sanctions for any anticompetitive activity, will ensure that the combination of AT&T and McCaw will have no adverse competitive effect on the market for telecommunications equipment.

21. The merger will not have a significant adverse effect on competition.

22. On balance, the proposed merger is in the public interest.

23. The settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

24. The motion to adopt the settlement should be granted.

25. Because the public benefits of this transaction should begin as soon as possible, this order should be effective today.

#### O R D E R

**IT IS ORDERED** that:

1. "Applicants' Motion for Commission To Adopt Proposed Settlement Agreement," filed on December 9, 1993, is granted.

2. The "Settlement Agreement" entered into by American Telephone and Telegraph Company (AT&T), McCaw Cellular Communications, Inc. (McCaw), Ridge Merger Corporation, Division of Ratepayer Advocates, Public Advocates, Inc., Cellular Resellers Association, Inc., and ABS Telephone Company is approved, subject to the terms and conditions set forth in this order.

3. The Application is granted, subject to the terms and conditions set forth in this order.

4. Subject to the terms and conditions of this order, McCaw is authorized under Section 854 of the Public Utilities Code to transfer to AT&T indirect control of Airsignal of California, Inc. (U-2028-C); Alpine CA-3, L.P. (U-3040-C); Bay Area Cellular Telephone Company (U-3007-C); Cagal Cellular Communications Corporation (U-3021-C); California InterCall, Inc. (U-5176-C); Cellular Long Distance Company (U-5228-C); Fresno Cellular Telephone Company (U-3014-C, U-4040-C); Los Angeles Cellular Telephone Company (U-3009-C); Napa Cellular Telephone Company (U-3016-C); Redding Cellular Partnership (U-3020-C); Sacramento Cellular Telephone Company (U-3013-C); Salinas Cellular Telephone Company (U-3018-C); Santa Barbara Cellular Systems, Ltd. (U-3015-C); Stockton Cellular Telephone Company (U-3012-C); and Ventura Cellular Telephone Company (U-3010-C).

5. The approvals granted in this order are conditioned on AT&T's and McCaw's consent to submit to the jurisdiction of the Commission for the limited purpose of complying with any orders issued in the investigation we institute in a companion order. Within 15 days of the effective date of this order, AT&T and McCaw shall express this consent by letter to the Executive Director, with copies served on all parties to this proceeding.

6. As a condition of our approval of this application, AT&T shall honor its stated policy to negotiate in good faith with all cellular service providers with respect to the sale of cellular infrastructure equipment.

7. Applicants shall complete their implementation of equal access, as provided in the settlement, as quickly as practicable. The Commission Advisory and Compliance Division, as it reviews the periodic reports, required by the settlement, on the implementation of equal access, shall bring to our immediate attention any indication that applicants are delaying implementation of equal access for competitive reasons.

This order is effective today.

Dated April 6, 1994, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
PATRICIA M. ECKERT  
NORMAN D. SHUMWAY  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
Commissioners

**APPENDIX A**

**List of Appearances**

Applicants: Morrison & Foerster, by Marc P. Fairman, James Tobin, and Suzanne Toller, Attorneys at Law, for McCaw Cellular Communications, Inc. and McCutchen, Doyle, Brown & Enersen, by Greg Landis, Attorney at Law, for American Telephone and Telegraph Company.

Protestant: Peter A. Casciato, Attorney at Law, for Cellular Resellers Association, Inc., and ABS Telephone Company.

Interested Parties: Jerome F. Candelaria, Attorney at Law, for Wright & Talisman; Pillsbury, Madison & Sutro, by Mary B. Cranston, Attorney at Law, for Pacific Telesis Group, Pacific Bell, PacTel Cellular, Los Angeles Limited Partnership, and Sacramento-Valley Limited Partnership; Ellen S. Deutsch, Attorney at Law, for Citizens Utilities Company of California; Judith A. Endejan and John F. Raposa, Attorneys at Law, for GTE California, Incorporated; Richard Hansen, for Cellular Agents Association; Thomas J. Long, for Toward Utility Rate Normalization (TURN); Martin A. Mattes, for Graham & James; Mark Savage and Robert Gnaizda, Attorneys at Law, for Latino Issues Forum, Chinese for Affirmative Action, San Francisco Black Chamber of Commerce, Mexican-American Political Association, and American G.I. Forum; Lindsay Bower, Attorney at Law, for the Department of Justice; Armour, Goodin, Schlotz & MacBride, by James D. Squeri, Attorney at Law, for GTE Mobilnet of California Limited Partnership; and Sara Steck Myers, Attorney at Law, for herself.

Division of Ratepayer Advocates: Janice Grau and Lionel B. Wilson, Attorneys at Law, and Norman C. Low and Diane Brooks.

**(END OF APPENDIX A)**

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

In the Matter of the Joint )  
Application of the American Telephone )  
and Telegraph Company, Ridge Merger ) Application No. 93-08-035  
Corporation and McCaw Cellular )  
Communications, Inc. for Authorization )  
to Transfer Indirect Control of )  
Airsignal of California, Inc. )  
(U-2028-C); Alpine CA-3, L.P. )  
(U-3040-C); Bay Area Cellular )  
Telephone Company (U-3007-C); Cagal )  
Cellular Communications Corporation )  
(U-3021-C); California InterCall, Inc. )  
(U-5176-C); Cellular Long Distance )  
Company (U-5228-C); Fresno Cellular )  
Telephone Company (U-3014-C), )  
U-4040-C); Los Angeles Cellular )  
Telephone Company (U-3009-C); Napa )  
Cellular Telephone Company (U-3016-C); )  
Redding Cellular Partnership )  
(U-3020-C); Sacramento Cellular )  
Telephone Company (U-3013-C); Salinas )  
Cellular Telephone Company (U-3018-C); )  
Santa Barbara Cellular Systems, Ltd. )  
(U-3015-C); Stockton Cellular )  
Telephone Company (U-3012-C); and )  
Ventura Cellular Telephone Company )  
(U-3010-C) from McCaw Cellular )  
Communications, Inc. to the American )  
Telephone and Telegraph Company )  
)

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Agreement"), executed this \_\_\_ day of December, 1993, is entered into by and among the undersigned parties to Application No. 93-08-035 (hereinafter collectively "the Parties").

RECITALS

A. American Telephone and Telegraph ("AT&T"), Ridge Merger Corporation and McCaw Cellular Communications, Inc. ("McCaw") (hereinafter collectively "AT&T/McCaw") filed Application No. 93-08-035 (the "Application") on August 24, 1993 pursuant to Section 854 of the California Public Utilities Code for authorization from the California Public Utilities Commission to transfer to AT&T indirect control of each of the regulated California Utilities in which MCCI subsidiaries have a voting interest of 50% or greater.

B. The Division of Ratepayer Advocates ("DRA") filed a protest to the Application on September 24, 1993. Cellular Resellers Association, Inc. and ABS Telephone Company ("CRA") filed a protest to the Application on September 24, 1993. Toward Utility Rate Normalization ("TURN") filed a response to the Application on September 24, 1993.

C. The Parties desire to resolve the issues addressed by this Agreement in a manner which serves to conserve administrative resources and is consistent with both the public interest and their individual interests, and wish to do so without engaging in litigation of these issues before the Commission. The Parties agree to compromise, settle and adjust all claims which have been or could have been asserted in the Application proceeding on the terms and conditions set forth below in this Agreement. Based on these terms and conditions, the testimony served by the Applicants on October 22, 1993, and the Parties' review of the proposed transaction, each Party withdraws its protest to the Application in order to permit the Commission to proceed with approval of the Application as conditioned by this Settlement Agreement, which resolves all outstanding issues raised by the parties.

D. The Parties have complied with Rule 51.1(b)-(c) of the Commission's Rules of Practice and Procedure. A settlement conference was duly noticed and held on November 17, 1993 at 8:30 a.m. A further settlement conference was duly noticed and held on December 7, 1993.

E. For purposes of this Agreement:

Commission refers to the California Public Utilities Commission.

Agreement refers to this document.

Merger refers to the transaction whereby McCaw will become a wholly owned subsidiary of AT&T.

Transaction refers to the transfer of indirect control of McCaw's interests in those entities subject to Application No. 93-08-035.

McCaw's California Utilities refers to those Commission-certified cellular utilities subject to Application No. 93-08-035 over which McCaw has the ability to exercise majority voting control.

Parties refers to the signatories to this Agreement.

NOW, THEREFORE, for and in consideration of the mutual terms, covenants and conditions herein contained, the Parties agree as follows:

I. General Terms and Conditions

1. The terms of this Agreement will extend for five years from the effective date of the merger except as expressly noted hereinafter. AT&T/McCaw will notify the Parties of the effective merger date. Nothing in this Agreement extends jurisdiction of any regulatory agency over any issue, matter or utility for which that agency does not have jurisdiction. Neither this Agreement nor the Transaction itself will change, limit or extend any existing authority or jurisdiction of the Commission over any of the entities subject to this Agreement.

2. The implementation of this Agreement by AT&T/McCaw is contingent upon final and complete approval of the Transaction under § 854 by the Commission and consummation of the Transaction by the applicants. Successful implementation of this Agreement satisfies the Parties' concerns regarding the Transaction.

3. The positions taken herein, and the actions taken in furtherance of this Agreement, are in settlement of disputed claims. Nothing in this Agreement shall be deemed as an admission of any allegation raised in any of the pleadings submitted in connection with this proceeding. The Parties



agree that the actions required to be taken by them pursuant to this Agreement are without prejudice to positions each Party has taken, or may hereafter take, in any other proceeding. This Agreement is not intended by the Parties to be binding precedent in any other proceeding or litigation not involving the matters explicitly covered by this Agreement. None of the terms of the Agreement shall apply for any purpose other than implementation of this Agreement.

4. This Agreement is entered into in accordance with Rule 51.1 et seq. of the Commission's Rules of Practice and Procedure. The Parties believe that this Agreement is a reasonable compromise of their opposing positions in Application No. 93-08-035. The Parties aver that this Agreement is reasonable in light of the record, consistent with law and in the public interest.

5. This Agreement is subject to approval by the Commission. The Parties agree jointly to support the provisions of the Agreement set forth below and jointly to urge the adoption by the Commission of these recommendations in their entirety in this proceeding. The Parties will file a motion seeking approval of this Agreement under Rule 51 of the Commission's Rules of Practice and Procedure. The Parties agree to cooperate and use their best efforts to encourage the Commission to approve the Application expeditiously, without a hearing, on terms stated herein.

6. The Parties agree to participate, if necessary or appropriate, in joint ex parte contacts in accordance with applicable Commission rules and procedures to encourage the Commission to accept the Agreement.

7. Pending final approval of this Agreement by the Commission, the Parties agree to support this Agreement as their litigation position in this proceeding. However, nothing in this Agreement prohibits the Parties from separately responding to the Attorney General's opinion, to the extent that opinion covers issues not addressed in this Agreement.

8. The Parties agree to actively defend this Agreement if its approval is opposed by others not parties to this Agreement and to consult with each other regarding the development of a defense to any issues raised by others in opposition to the Agreement.

9. The Parties each agree, without further consideration, to execute and/or cause to be executed any other documents, and to take any other action as may be necessary, to effectively consummate the subject matter of this Agreement.

10. Upon execution of this Agreement, each of the protesting Parties' protests of A.93-08-035 shall be deemed withdrawn. Each Party hereby waives any and all objections to A.93-08-035 and to the proposed transaction on any ground whatsoever, whether or not now known, suspected or claimed. The Parties agree that this Agreement resolves all issues in A.93-08-035 and that any and all claims which have been or could have been asserted in the Application proceeding are hereby released, discharged and settled, subject to the terms and conditions of this Agreement. No testimony, other evidence, or briefing will be offered individually or collectively by the Parties in A.93-08-035, except for such testimony, other evidence or briefing as is required to support this Agreement, or to respond to testimony, evidence, briefing or other matters submitted or raised by non-settling entities.

11. Pending final approval of this Agreement by the Commission, no Party shall engage in any ex parte contact with the Commission in regard to this Agreement except in the presence of the other Parties. No Party shall seek, directly or indirectly, to have the Commission modify the terms of this Agreement without the express written consent of all other Parties.

12. Each Party may issue a press release or other statement concerning this Agreement to the effect that the matter has been settled by the Parties hereto. Each Party may also issue a press release or other statement to the effect that they believe the Transaction is in the public interest.

13. This Agreement contains the entire agreement between the Parties to this Agreement, and all previous understandings, agreements, and communications prior to the date hereof, whether express or implied, oral or written, relating to the subject matter of this Agreement are fully and completely extinguished and superseded by this Agreement. This Agreement shall not be altered, amended, modified, or otherwise changed except by a writing duly signed by all the Parties hereto.

14. This Agreement shall not establish, be interpreted as establishing, or be used by any Party to establish or to represent their relationship as any form of agency, partnership or joint venture. No Party shall have any authority to bind the other or to act as an agent for the other unless written authority, separate from this Agreement, is provided.

15. This Agreement and all covenants set forth herein shall be binding upon and shall inure to the benefit of the respective Parties hereto, their legal successors, heirs,

assigns, partners, representatives, executors, administrators, parent companies, subsidiary companies, affiliates, divisions, units, agents, attorneys, officers, directors and shareholders.

16. This Agreement and the provisions contained herein shall not be construed or interpreted for or against any Party hereto because that Party drafted or caused its legal representative to draft any of its provisions.

17. Nothing in this Agreement shall be construed to obligate any Party to take any action in violation of any statute, regulation, rule, order or other provision of law or of any fiduciary or other duty to any person or entity.

18. Time is of the essence for this Agreement.

## II. Regulatory Oversight Mechanism

19. The Parties hereto recommend that the Commission open an investigation ("OII"), similar to the Forum OII (I.90-02-047) in the New Regulatory Framework ("NRF") proceeding, to provide interested parties, including but not limited to the Parties hereto, a mechanism for addressing the following: (a) settling disputes among the Parties about the terms of this Agreement, as adopted by the Commission; (b) dealing with specific issues referred to the OII under the Agreement; and (c) resolving other § 854 issues arising from the Transaction where any such issues or their significance were not reasonably foreseeable at the time this Agreement is adopted by the Commission. Similar to the Forum OII, interested parties would file a petition in the investigation and would need to make an affirmative showing why other available forums are inadequate or inappropriate to meet their needs. Interested parties may not petition to raise issues under consideration in another proceeding or subject to another procedural mechanism, such as a complaint, an advice letter, an application or a petition for modification. Interested parties may petition to raise issues concerning the terms of this Agreement, as adopted by the Commission, including equal access implementation, customer proprietary information, bundling as described in paragraph 27 of this Agreement, universal service, infrastructure and investment, the effect of the merger on AT&T/McCaw employees, AT&T/McCaw's commitment to provide consumer benefits under § 854 and monitoring. In addition, interested parties may petition to raise issues concerning any anti-competitive effects arising specifically from the Transaction where these issues or their significance were not reasonably foreseeable at the time the Commission adopts this Agreement and not addressed by any provisions contained in this Agreement, as adopted by the Commission. Protests to Petitions and comments thereto may be filed pursuant to the Commission's

rules. Nothing in this paragraph 19 shall be construed to prohibit or limit any Party from initiating or participating in other proceedings for the purpose of seeking generic changes (other than to this Agreement) or other appropriate rulings.

### III. Reporting

20. For purposes of the reporting requirements of this Agreement, AT&T will treat McCaw as a separate entity for two years and provide confidential annual financial reports to the Commission on that basis.

21. McCaw's California Utilities will remain separate utilities for at least two years after the execution of this Agreement. Thereafter, should AT&T/McCaw seek any consolidation or merger of McCaw's California Utilities, AT&T/McCaw commits to seek Commission approval of any such consolidation or merger subject to § 851 of the Public Utilities Code or such other procedures as may apply at the time, including any reporting requirements determined appropriate by the Commission.

22. AT&T/McCaw will provide all reports as currently required in accordance with the standards and in the form and manner established by the Commission. Furthermore, AT&T/McCaw will apply procedures for allocating corporate overhead to the California McCaw operations consistent with its current allocation practices for AT&T Communications of California, Inc.

23. AT&T/McCaw will provide confidential reports to DRA and CACD as necessary for 5 years, except as expressly noted hereinafter, to ensure compliance with equal access implementation, employment, capital expenditures and Women and Minority Business Enterprise ("WMBE") requirements. Reports for monitoring compliance with this Agreement are described in each section of this Agreement. AT&T/McCaw, DRA and CACD will consult to develop the content and format of these reports. Additional reports as necessary to monitor compliance with this Agreement may be established through the OII. Appendix A lists the reports required by this Agreement. Nothing in this paragraph shall be construed to prevent a Party from obtaining confidential reports required under this Agreement pursuant to mutually agreeable non-disclosure arrangements between AT&T/McCaw and such a Party.

### IV. Equal Access Requirements

24. AT&T/McCaw will complete implementation of equal access on a nondiscriminatory basis for end users and

interexchange carriers for cellular service provided by McCaw's existing California Utilities within 24 months of the effective date of the merger. Implementation will begin the earlier of:

- (a) the entry of a final order by the Federal Communications Commission ("FCC") requiring cellular equal access; or
- (b) six months after the effective date of the merger.

25. In the event that the FCC has not acted within 6 months of the effective date of the merger, AT&T will implement equal access for McCaw's existing cellular California Utilities in accordance with AT&T's most recent filings on the matter at the FCC, subject to the following conditions:

- (a) Application of Equal Access. AT&T/McCaw will deliver to end users' pre-subscribed interexchange carriers all calls terminating outside McCaw's California cellular utilities' cellular calling areas as specified in their basic rate tariffs at the time the merger is consummated. Any expansion of McCaw's cellular calling area will be accomplished by advice letter. For purposes of this Section IV of this Agreement, such expansion will not result in a calling area beyond the maximum permissible boundaries of the cellular calling area of the competing B license carrier.
- (b) Notification. Cellular customers will receive notification of equal access and their ability to change long distance carriers, including a list of available interexchange carriers with contact numbers. DRA will review this customer notice for clarity and nondiscrimination. New customers will have notice provided and the opportunity to choose a long distance carrier at the time of activation. Customers may change their pre-subscribed interexchange carrier once without charge. Sales methods and procedures for implementation of equal access will be provided to DRA and CACD. Customer balloting will be conducted if, when and as the FCC requires it of non-Regional Bell Operating Company ("RBOC") cellular carriers. Interexchange carriers will be notified of the availability of equal access pursuant to paragraph 25.
- (c) Switching Systems and Network. The implementation of equal access pursuant to this

Agreement shall not force the reconfiguration of the McCaw switching system and network serving the cellular calling area.

- (d) Exceptions. If DRA and AT&T/McCaw agree that FCC action on equal access is imminent, implementation of equal access may be deferred by letter to the CACD, pending FCC action.
- (e) Future orders on equal access. If any administrative agency or court later orders equal access that does not apply to AT&T/McCaw which differs from what is being implemented here, either AT&T/McCaw or DRA may seek to modify this Agreement (through the OII process, or other appropriate Commission procedure) to comport with the implementation of equal access as ordered by that agency or court.
- (f) Future cellular utility purchases by AT&T/McCaw. If, after the close of the merger, AT&T/McCaw acquires majority voting control of a cellular utility in California, then AT&T/McCaw will begin implementation of equal access with respect to that cellular utility within 6 months of such acquisition of control and complete the implementation within 24 months.
- (g) Existing equal access. AT&T/McCaw commits to use all reasonable efforts to keep equal access in place in the California utilities in which it maintains an interest and in which equal access is in effect at the time this Agreement is executed.
- (h) Equal Access Network Reconfiguration ("EANR") costs. If, within 5 years of the consummation of the merger, AT&T/McCaw implements a specific cost recovery mechanism for the cost of implementing equal access, AT&T/McCaw commits to recover those costs from interexchange carriers on a nondiscriminatory basis, through tariffs or contracts at the tariffed rate, to be filed with the Commission for that purpose.
- (i) Reporting. AT&T/McCaw will provide DRA and CACD a progress report on the implementation of equal access every six months until the implementation of equal access pursuant to this Agreement is complete.

- (j) For the purposes of this Agreement, the term "equal access" shall be as defined by the FCC in any final order requiring cellular equal access or, pending such an order, as described in this paragraph 25, and shall not be deemed to refer to the equal access obligations of RBOCs as currently mandated by the Modification of Final Judgment ("MFJ").

#### V. Disclosure of Customer Proprietary Information

26. AT&T/McCaw commits to comply with any rules on customer proprietary information established by the FCC for non-wireline cellular carriers. The Parties reserve the right to petition in the OII should the FCC fail to act or to establish adequate safeguards for customer proprietary information for both wholesale and retail customers.

#### VI. Bundling

27. Both AT&T and McCaw will comply with the provisions of California Public Utilities Code § 532, § 453(a) and § 702, as interpreted by the Commission in D.93-02-010, D.89-07-019 and D.90-10-047 modifying D.90-06-025, for so long as they remain in effect, with respect to the bundling of cellular services and/or equipment with long distance services and with respect to the bundling of a tariffed service with a non-regulated product or service. If AT&T/McCaw seeks exceptions to these restrictions, it will use the procedures contained in General Order 96-A.

28. Nothing in this Agreement prevents AT&T/McCaw from pursuing the elimination of bundling restrictions as they apply to their operations in California, through normal Commission procedures. In addition, the Parties may resolve disputes concerning the bundling of cellular services and/or equipment with long distance services, including the effects of subsequent Commission decisions on bundling on the terms of this Agreement, in the OII.

#### VII. Universal Service

29. If the Commission orders end-user surcharges in I.87-11-033 applicable to cellular end users, namely the Universal Lifeline Telephone Service ("ULTS"), California High Cost Fund ("CHCF"), Deaf Trust or Post-Interim Rate Design ("IRD") Revenue Shortfall for Pacific and/or GTEC surcharges or their equivalents, McCaw will not appeal.

### VIII. Infrastructure and Investment

30. AT&T/McCaw commits to the capital expenditure of at least \$32.5M over two years in California for the improvement of its cellular utilities. AT&T/McCaw will provide a confidential annual status report to DRA and CACD on cellular capital expenditures for five years.

### IX. Impact on Employees

31. AT&T/McCaw commits that, for a period of two years, there will be no net loss of jobs for AT&T's California operations or McCaw's California Utilities as a result of the merger. AT&T/McCaw further commits that there will be no material reduction of salary or benefits by job classification for AT&T/McCaw's California cellular operations for two years. AT&T/McCaw will provide to DRA and CACD, prior to the consummation of the merger, confidential reports describing current California employment, salary and benefit levels as well as any planned reductions in California employment unrelated to the merger. AT&T/McCaw will, for two years after consummation of the merger, provide DRA and CACD with confidential annual reports of California employment, salary and benefit levels as well as any planned reductions in California employment, including an explanation of any net loss of jobs which may have occurred during the preceding year.

### X. Section 854 Benefits

32. AT&T/McCaw is committed to having the Transaction and Merger benefit California customers under Section 854. Subject to such competitive and technological developments that may alter the approaches described in this section, improvements in the following areas will be made:

(a) Improvements in Service Design. Existing service and planned improvements will be augmented by the merger. The improved financial position of McCaw, combined with access to AT&T research capabilities, would enable McCaw's California utilities to implement service improvements more quickly than would otherwise be possible.

(i) Roaming

Call Forwarding. The network's ability to automatically reroute a customer's call from the home service area to a visited service area, as the customer moves from service area to service area, will be deployed within five years.



**Call Redirection.** Within five years of the merger, intelligence will be created in the network that will route a call to the customer without first going to the customer's home service area, and AT&T's network will be available to deliver calls to the roaming customer by more efficient routing.

AT&T and McCaw will work closely within the next five years to develop the capability of Integrated Service Digital Network ("ISDN") to signal between the wired and wireless network for the benefit of the roaming customer.

(ii) Fraud Control

The merger will enable AT&T and McCaw to share access to their respective databases for purposes of fraud control for the benefit of both wholesale and retail customers.

(iii) System Capacity

McCaw will have the opportunity to create additional cell sites at AT&T radio sites.

McCaw's network signalling capacity will be increased by the accelerated incorporation of SS7 into the cellular system.

(iv) Service Introduction

McCaw's wholesale and retail customers will benefit by the implementation of digital technology where cost effective within the McCaw network over the life of the Agreement.

(b) Improvements in Customer Service. The interaction between customers and the company will improve as a result of the merger. The improved financial standing of McCaw, coupled with the availability of AT&T systems, can benefit wholesale and retail customer service in the following ways:

Billing options. McCaw's customers will benefit from AT&T's experience with various billing options that allow the implementation of additional customer focused billing.

Marketing contact. AT&T has a well-trained group of customer contact representatives, available 24 hours a day, 7